

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Comprehensive Review of the	)	WC Docket No. 14-130
Part 32 Uniform System of Accounts	)	
	)	
Jurisdictional Separations and Referral to	)	CC Docket No. 80-286
the Federal –State Joint Board	)	
	)	OMB Control No. 3060-XXXX

**COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA - The Internet & Television Association respectfully submits the following comments in response to the Commission’s Paperwork Reduction Act (PRA) Notice and Request for Comment<sup>1</sup> regarding information collection requirements related to the Commission’s *Part 32 Order*.<sup>2</sup> As described below, the PRA Notice fails to acknowledge and account for the substantial new burdens that will be placed on the hundreds of companies that attach facilities to the roughly 20 million telephone company poles potentially affected by the *Part 32 Order*, nor does it acknowledge and account for the significant new burden that will be placed on the Commission itself due to the inevitable increase in the number of pole attachment complaints that will occur if changes to the new rules are not adopted before they take effect. The Commission can and should address these concerns by granting the relief requested in NCTA’s pending Petition for Reconsideration.<sup>3</sup>

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<sup>1</sup> 82 FR 31969-70 (July 11, 2017) (PRA Notice).

<sup>2</sup> *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, CC Docket No. 80-286, Report and Order, FCC 17-15 (rel. Feb. 24, 2017) (*Part 32 Order*).

<sup>3</sup> Petition for Reconsideration of NCTA – The Internet & Television Association, WC Docket No. 14-130 (filed June 5, 2017) (NCTA Petition).

## INTRODUCTION

Under the Paperwork Reduction Act, the Commission must demonstrate to the Office of Management and Budget (OMB) “that it has taken every reasonable step to ensure that the proposed collection of information ... is the least burdensome necessary for the proper performance of the [Commission’s] functions to comply with legal requirements and achieve program objectives.”<sup>4</sup> The OMB standard for assessing burden is not limited to the burden on the respondent. “The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.”<sup>5</sup>

NCTA recognizes the importance of eliminating unnecessary burdens on the communications industry, but the *Part 32 Order* and the PRA Notice do not meet the requirements established by the PRA. On four separate occasions over the last decade the Commission has explained to OMB that Part 32 accounting requirements are necessary because “*there is no other existing information known of that would serve our regulatory purposes.*”<sup>6</sup> Notwithstanding this consistent finding, the *Part 32 Order* allows price cap carriers to forgo Part 32 accounting without taking sufficient steps to address the absence of necessary cost information. The failure to require price cap carriers to maintain and publish appropriate information will shift disproportionate costs and burdens to the hundreds of cable and telecommunications entities that attach facilities to essential utility poles owned by price cap

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<sup>4</sup> 44 U.S.C. §§3501-3520.

<sup>5</sup> 5 C.F.R. 1320.8(d)(1)(iii).

<sup>6</sup> See FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (June 2017) at 2; FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2014) at 2; FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Jan. 2011) at 2; and FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Apr. 2008) at 2.

carriers. It will also significantly increase the burdens on the Commission and its staff as the new rules, and the accompanying rate increases and lack of transparency, invariably will lead to a substantial increase in pole attachment complaints.

The resulting burden on the Commission and attaching entities, as well as the reduced practical utility of GAAP cost data (as compared to the data previously required under Part 32), have not been appropriately accounted for in the Commission's burden estimates. As described below, the best way for the Commission to address this problem is to revise its *Part 32 Order* as requested by NCTA in its pending Petition for Reconsideration.

**I. UNLESS REVISED, THE COMMISSION'S PART 32 ORDER WILL INCREASE THE OVERALL BURDEN ASSOCIATED ENSURING THAT POLE ATTACHMENT RENTAL RATES DO NOT EXCEED REASONABLE COST BASED LEVELS.**

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Until this *Part 32 Order*, the Commission's carefully constructed pole attachment rules and Part 32 accounting requirements ensured a simple and expeditious process for determining and policing just and reasonable pole attachment rates. Indeed, until this year, each time the Commission considered streamlining carrier accounting requirements, it took steps to ensure that the cost information necessary to calculate pole attachment rates remained available to the Commission and attaching entities.<sup>7</sup> As a result, for the last 30 years, attaching entities have

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<sup>7</sup> *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1*, CC Docket No. 99-253, Notice of Proposed Rulemaking, 14 FCC Rcd 16584, 16588 ¶ 9 (1999); *2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, CC Docket Nos. 00-199 *et al.*, Report and Order, 16 FCC Rcd 19911, 19928 ¶ 44, 19931 ¶ 48 (2001) (*Phase 2 Order*); *Revision of ARMIS Annual Summary Report*, CC Docket No. 86-182, Order, 17 FCC Rcd 25421, 25423 ¶ 5 (Ind. Analysis & Technology Division, 2002); *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket Nos. 07-204 and 07-273, Memorandum Opinion and Order, 23 FCC Rcd 18483, 18490-91 ¶¶ 13-14 (2008); *USTelecom Forbearance Order*, 28 FCC Rcd at 7657-60 ¶¶ 61-65; *Revision of ARMIS Annual Summary Report*, CC Docket No. 86-182, Order, 29 FCC Rcd 11436, 11437-38 ¶¶ 4, 5 n.8 (Ind. Analysis & Technology Division, 2014). The Commission has likewise assured the availability of this data even as it transitioned from Form M, from Part 31 to Part 32, to ARMIS 43-01 Table III, and to electronic submission of

been able to calculate pole attachment rates using publicly-available, consistently-derived, pole-specific, disaggregated carrier cost data, filed annually with the Commission and supplemented, if necessary, by information obtained directly from carriers through discovery. As previously recognized by the Commission, “[w]ithout ongoing access to the data derived from Part 32 accounts, neither the Commission nor interested parties could ascertain or verify that pole attachment rates based on the Commission’s rate formula reflect actual costs, or that these calculations produce just and reasonable rates in accordance with our rules.”<sup>8</sup> The Commission thus repeatedly informed OMB, in 2008, 2011, 2013 and 2017, that the Part 32 “information submitted to this Commission by carriers provides necessary detail to enable the Commission to fulfill its regulatory responsibilities.... There is no other existing information known of that would serve our regulatory purposes.”<sup>9</sup>

Notwithstanding this consistent recognition of the unique value of Part 32 accounting data, the *Part 32 Order* eliminated the requirement that price cap carriers follow Part 32 rules and instead allows them to follow Generally Accepted Accounting Principles (GAAP), which do not require the same level of detail regarding pole-related costs. As a result, it is clear that price

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Pole Attachment Data required as a condition of forbearance from the full ARMIS Report 43-01 filing requirement using the Commission’s Electronic Comment Filing System.

<sup>8</sup> *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket Nos. 12-61 *et al.*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7628, 7657-60 ¶¶ 61-65 (2013).

<sup>9</sup> See FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2017) at 2; FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2014) at 2; FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2011) at 2; and FCC Supporting Statement, *Part 32, Uniform System of Accounts for Telecommunications Companies*, OMB Docket 3060-0370 (Aug. 2008) at 2.

cap carrier pole attachment rents will increase as a result of the transition to GAAP accounting.<sup>10</sup> The Commission has sought to guard against such increases by requiring each carrier to establish an Implementation Rate Difference (IRD) when it first transitions to GAAP, and adjusting pole rates by such IRD over the ensuing 12 years.<sup>11</sup>

To ensure that the IRD achieves its intended purpose, and that carriers do not use the transition to GAAP as a mechanism for unwarranted rate increases, attaching entities will need access to publicly available disaggregated pole cost data, as well as any underlying allocations and calculations for the cost data and pole attachment rate calculation. Unfortunately, the Commission's *Part 32 Order* did not clearly provide for continued public access to the necessary data, thereby shifting disproportionate costs and burdens to the hundreds of cable and telecommunications entities that attach facilities to telephone poles who will now need to request from pole owners information that previously had been publicly available. They also will need to pursue relief from the Commission when that information is not provided by the pole owner, thereby placing significantly increased burdens on its Enforcement Bureau.

Indeed, if the necessary cost information is not made available to attaching parties by the price cap carriers, the number of disputes that are brought to the Commission could be crippling. Telephone companies own approximately 20 million poles for which rates are calculated using the Commission formulas.<sup>12</sup> In 2015 alone, incumbent local exchange carriers filed ARMIS pole

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<sup>10</sup> See NCTA Petition at 11-18 and Exhibits 1-12; Reply to Oppositions to Petition for Reconsideration of NCTA – The Internet & Television Association, WC Docket 14-130 (filed July 31, 2017) (NCTA Reply) at 2-3.

<sup>11</sup> See *Part 32 Order* at ¶¶ 36-38 (stating intent to “monitor pole attachment rates” and hold price cap carriers to promise that shifting accounting methods was “not an effort to increase pole attachment rates”). As explained in NCTA's Petition for Reconsideration, there are loopholes in the Commission's rules that may enable carriers to implement significant rate increases notwithstanding application of the IDR. NCTA Petition at 15-20.

<sup>12</sup> Comments of National Cable & Telecommunications Association, WC Docket No. 09-154, GN Docket No. 09-51, WC Docket No. 07-245, WC Docket No. 04-36, Appendix B: Declaration of Dr. Michael D. Pelcovits, ¶

attachment data for ninety-six separate service areas.<sup>13</sup> Pole attachment rates are updated annually using this cost data and rates may be reviewed and adjusted for multiple years, consistent with state statutes of limitations.<sup>14</sup> Within these areas, there are hundreds of cable companies, competitive local exchange carriers, wireless carriers, Internet service providers and distributed antenna systems that attach to telephone company poles, and this number is likely to grow in the future given Chairman Pai's robust efforts to promote deployment to more areas by all types of providers. Due to this large number of current and future attachers, the potential for pole disputes is massive.

## **II. THE NEW COST INFORMATION BEING COLLECTED HAS NO PRACTICAL UTILITY AS COMPARED TO THE MORE ROBUST PART 32 INFORMATION PREVIOUSLY REQUIRED.**

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In addition to ensuring that a collection requirement is the least burdensome necessary, under the PRA the Commission also must demonstrate to OMB that the collection has "practical utility." OMB rules define practical utility as "the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its *accuracy*, *validity*, *adequacy*, and *reliability*," as well as "a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure in a useful and timely fashion."<sup>15</sup> To be truly useful, the collection of accounting information must not undermine the Commission's well-established and highly successful pole attachment rules and policies, including its formulas

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17, Table 2 (Sept. 24, 2009) (estimating 20,900,000 telco owned poles at the time. There are far more owned by electric utilities or jointly owned by both.).

<sup>13</sup> Price cap carriers that submitted this information in 2015 in CC Docket No. 86-182 include Frontier Communications Corporation, Verizon, AT&T Services, Inc., CenturyLink, Hawaiian Telcom Communications, Inc., Windstream Corporation, Telecommunications of Puerto Rico, and FairPoint Communications, Inc.

<sup>14</sup> 47 C.F.R. § 1.1410(a)(3).

<sup>15</sup> 5 C.F.R. § 1320.3(1).

that ensure the just and reasonable rates which are central to the deployment of affordable and robust communications networks.

As explained by NCTA in its Petition for Reconsideration filings, the GAAP and IRD information sought by this collection is inherently less accurate and reliable than the Part 32 information previously collected. Pole attachment rents should be based on the original booked cost of a bare pole when dedicated to public service, regardless of subsequent corporate acquisitions and reorganizations (i.e., the rate base).<sup>16</sup> However, carriers already are asserting that under GAAP, a carrier may increase pole costs through a corporate transaction, and restate plant depreciation in ways that do not account for pole costs previously recovered in advance from cable operators through pole rent.<sup>17</sup> And as NCTA has demonstrated, without further Commission protections, carriers may also inflate pole maintenance costs under GAAP by commingling pole related expenses with much more costly maintenance of aerial lines and underground and buried cable.<sup>18</sup> The only way to ensure the reasonableness of pole attachment rates is to require carriers to maintain and publish cost data that has the same practical utility as the Part 32 data and provide continued access to such data through public postings and robust pre-complaint discovery as recommended in NCTA's Petition for Reconsideration.

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<sup>16</sup> See 47 C.F.R. §§ 1.1404(g)(2), 1.1404(h)(2) (pole data to be based on based on original historical cost); 47 C.F.R. § 32.2411 (“This account shall include the original cost of poles, crossarms, guys and other material used in the construction of pole lines and shall include the cost of towers when not associated with buildings.”); 47 C.F.R. § 32.2000(e) (continuing property records to be maintained on the basis of original cost); Petition at 14-15. Substantive pole attachment law has rejected numerous attempts to raise pole costs to a “market” or “forward-looking” valuation. Petition at 4.

<sup>17</sup> See Opposition of the USTelecom Association, WC Docket No. 14-130 (July 21, 2017) (USTelecom Opposition) at 2 (stating that carriers should no longer be bound by original costs, and that under GAAP a carrier may increase pole costs through a corporate transaction).

<sup>18</sup> See NCTA Petition for Recon. at 12 (“The limited GAAP accounting information that carriers have provided to the Commission uses a higher level of plant and expense aggregation. As a result, this data commingles lower pole maintenance expenses with more costly maintenance of aerial lines and underground and buried cable. It also restates plant depreciation in ways that do not account for pole costs previously recovered in advance from cable operators through pole rent, among other accounting problems.”).

### **III. THE COMMISSION SHOULD REDUCE THE OVERALL BURDEN BY ADOPTING NCTA’S RECOMMENDATIONS SET FORTH IN ITS PETITION FOR RECONSIDERATION.**

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As demonstrated above, in the absence of any changes, the PRA Notice does not accurately reflect the burdens that will result from the new rules adopted in the *Part 32 Order* because it only considers the burden on price cap carriers and ignores the increased burden on hundreds of attaching parties and the Commission itself. The best way to mitigate the harm and meet the requirements imposed by the PRA is for the Commission to adopt the changes recommended by NCTA in its Petition for Reconsideration.

First, to limit the number of disputes that will arise when carriers shift to GAAP, the Commission should provide specific direction to ensure that the new regulatory regime “does not change what costs may be included in pole attachment rates” and that “rates will remain steady over the long-run” as intended by the Commission.<sup>19</sup> Specifically, the Commission should: prohibit carriers from inflating pole costs under GAAP above their traditional “original cost;” prohibit carriers from charging again for costs of disposal that have already been recovered through depreciation charges; require carriers to track and report the much lower pole maintenance expenses rather than the aggregate maintenance expenses for other plant with which pole maintenance is commingled in GAAP; and require that those carriers that have already depreciated their pole costs to less than zero under Part 32 may no longer charge for capital investment, but only for pole expenses.<sup>20</sup>

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<sup>19</sup> *Part 32 Order* at ¶ 38 (citing Letter from Lynn Follansbee, Vice President-Law & Policy, USTelecom, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-130, at 2 (Feb. 14, 2017)).

<sup>20</sup> NCTA Petition at 15-20.



In addition, the Commission should clarify, as the ILECs conceded in their reply comments,<sup>21</sup> that the ARMIS waiver reporting obligations (Report 43-01, Table III) and pre-complaint discovery procedures remain in effect. Sustained routine access to all pole attachment rate information without the need for a protective order, including any underlying allocations and calculations for the cost data and pole attachment rate calculation, is essential to efficient resolution of controversies and minimizes the burden on stakeholders and the Commission.

NCTA's proposed changes are especially required to reduce the burden of the Commission's information collection on small entities. Under the longstanding Part 32 requirements, rate complaints were rare because critical pole specific data was made available even to resource-strapped small, rural companies. As a result, all parties had confidence in how a pole attachment rate was derived. This is the model the Commission needs to preserve to ensure that pole rents remain at levels necessary to promote robust broadband deployment without placing undue burdens on attaching parties, particularly small entities.

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<sup>21</sup> NCTA Reply at 6-7.

## **CONCLUSION**

For the foregoing reasons, the Commission should revise its *Part 32 Order* prior to seeking OMB approval for the information collections associated with that order. Without such revisions, the *Part 32 Order* will significantly increase the cost to the public and the Commission of using pole cost data, and that data will have less practical utility than Part 32 data, contrary to the PRA's requirements.

Respectfully submitted,

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September 11, 2017